



POLICE DEPARTMENT

December 19, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Angela Garofalo
Tax Registry No. 925335
17 Precinct
Disciplinary Case No. 86146/10 (DADS No. 2010-571)

The above-named member of the Department appeared before me on May 26, 2011, June 16, 2011 and June 30, 2011, charged with the following:

1. Said Police Officer Angela Garofalo, assigned to the 17th Precinct, while off-duty, on or about and between August 30, 1998 and February 28, 2007, in the county of [REDACTED] did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said police officer did knowingly act in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old, in that said police officer did, on more than one occasion, strike and/or handcuff and/or threaten a child under seventeen years old known to the Department, a class "A" misdemeanor.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS
NYS Penal Law Section 260.10 - ENDANGERING THE WELFARE
OF A CHILD

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq. Respondent through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty in part of the charge in that Respondent is found guilty of having handcuffed a child who was under seventeen years of age on one occasion.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Kerry Garofalo, Person B, Person C and Dr. George Faireey as witnesses.

Kerry Garofalo

Kerry testified that she has been married to Person A for nearly 19 years. They have three children: Person B [redacted] years old), Person C ([redacted] years old) and Person D [redacted] years old). For eight years, Kerry and her family lived at Respondent's residence along with Kerry's [redacted], Person E, and Respondent who is her [redacted].

Kerry was working part-time as a medical biller and occasionally asked Rose or Respondent to watch her children while she was at work. Kerry described her relationship with Respondent prior to 2007 as "rocky," because on some days they would get along and on other days they would not. In 2001, Kerry and her family moved out of the Respondent's residence.

Kerry testified that some time after they had moved out of the Respondent's residence, Person B told her that Respondent had abused him. Kerry recalled that in August,

2006, Person B went to a baseball game with Respondent. When Person B returned from the game, he was “very agitated” and he told Person A, “You should have been there with me.”

In November, 2006, Person B started seeing Dr. Faireey, a psychiatrist, and he also began [REDACTED]. Kerry recalled that from the fall of 2006 to the winter of 2007, Person B did not get along with his siblings and, at times, he had “violent outbursts.”

In January, 2007, Kerry and Person A went to [REDACTED] and had to leave Person B with Respondent and her family. Person B, without giving any specific reasons why, requested not to be left alone with Respondent. On February 14, 2007, Person B told Kerry he was going to commit suicide by hanging himself. Person B continued to attend sessions with Dr. Faireey.

On February 24, 2007, Person B told Kerry for the first time that he was being abused by Respondent. In March, 2007, Kerry and Person A confronted Respondent. Kerry recalled that the conversation became a “yelling match.” Kerry accused Respondent of hitting and verbally abusing Person B. Following this incident, Kerry, Person A, Rose and Person E attended family mediation sessions, but quit after three sessions. Subsequently, Kerry stopped allowing her children to be in Respondent’s presence. Kerry said that she did not think Person B was in “immediate danger.”

Kerry did not notify Child Protective Services (CPS). Person B’s school notified CPS after Person B started seeing the school psychiatrist, Dr. Lodrini. Kerry was interviewed by CPS in the fall of 2007.

Kerry said that during 2010, she and her family would sometimes join Person B’s therapy sessions with Dr. Faireey. Kerry admitted that on Father’s Day of 2005 or 2006, she disciplined Person B by hitting him after Person B had struck Person C.

Since February, 2007, Kerry has had to call the police several times because Person B would become angry and start assaulting her and Person A. In one instance, Person B apparently believed that Person A was Respondent and began attacking him and yelling, "You are a police officer, why are you doing this to me?" In March, 2007, Person C told Kerry that Respondent had abused Person B by handcuffing Person B to her car.

Kerry testified that Person B did not relate all of the abuse incidents at one sitting. Kerry testified that Person B revealed these incidents to her one by one during February, March and April of 2007.

Kerry testified that in February, 2007, Person B told her that while he and the Respondent were at a baseball game at Yankee Stadium during August, 2006, Respondent had punched him numerous times. Person B also alleged that he had also been handcuffed inside Respondent's car. Person B also told her that Respondent had handcuffed him to a doorknob inside Respondent's residence, that he had called Person C and asked her to help him, but that before Person C went downstairs to help him, Rose told Person C that Respondent would "take care of it."

On cross-examination, Kerry agreed she never personally observed Respondent physically or verbally abuse Person B, although Respondent was "bossy." Kerry agreed that while she was residing with Respondent, she never saw Respondent's handcuffs.

Kerry agreed that during 2007, Person B was taking five different prescription medications to help him control his anger.

Kerry agreed that she has no proof that Respondent ever abused Person B other than what Person B and Person C told her. During February, 2007, Kerry did not witness any marks

or bruises on Person B's body that were consistent with the type of abuse Person B described to her.

Kerry confirmed that she did not report Respondent to the Department of Social Services or the District Attorney's office. She acknowledged that on November 19, 2007, Person B was taken to [REDACTED] emergency room because he had a "meltdown." Person B had been stabbing a punching bag, which represented Respondent, with a knife. Kerry further acknowledged that in March, 2008, Person B was admitted to [REDACTED] Psychiatric Hospital for attacking his father. Person C never told her that she had ever observed Respondent hit Person B, only that Respondent had handcuffed Person B to her car.

Kerry agreed that the Yankee Stadium trip incident may have occurred in September, 2006, not August, 2006. Kerry agreed that, even though Person B had alleged that Respondent took him to a side alley and punched him repeatedly with a closed fist, after Person B returned from the Yankee Stadium trip, Kerry did not observe any marks or bruises on Person B's body.

On January 16, 2007, while Kerry was in Florida, she received a call from Rose in which Rose told Kerry that Person B was upset and did not want to go to pitching camp because Respondent would be driving him there. Although Kerry was aware that Respondent was going to take Person B to the pitching camp, Kerry did not ask Rose to stop Respondent from taking Person B there.

Kerry agreed that CPS had conducted an investigation of the allegations made by Person B against Respondent and that CPS had concluded that all allegations were unsubstantiated.

Person B

Person B, who is presently a [REDACTED], testified that he was placed in handcuffs by Respondent for the first time when he was [REDACTED] years old when he and his family were living at Respondent's residence. He described that while Respondent was driving him and Person C home from church, he and Person C began bickering in the back seat. When they arrived at Respondent's residence, Respondent yelled at them. Respondent then took out handcuffs and handcuffed one of his hands to the rear passenger door. Person C was the only person who saw him handcuffed to the car door. He remained handcuffed to the door for about five or ten minutes. He was then released by Respondent. Person B did not tell his parents or his grandparents or anyone else about this incident because he was afraid that Respondent would hurt him.

Person B testified that in 2007, during the Martin Luther King (MLK) holiday weekend, he was handcuffed to a door by Respondent. He was playing videogames with his neighbor and "something transpired," and then Respondent accused him of stealing the neighbor's video game. A couple of hours after the neighbor left, Respondent took Person B to her room in the basement, handcuffed him to a door knob and then slapped and punched him. During the one-half hour while Person B was in handcuffs, he called Person C numerous times on her cell phone and asked her to help him and he yelled out for help. After hearing Person B's calls for help, Respondent came down and told him, "Shut your mouth and if you say anything about this I will kill your parents." She then removed the handcuffs. Person B did not tell his grandparents about this incident because he was afraid that Respondent would hurt his parents.

Person B testified that in the fall of 2006, he and Respondent went to a street fair on Arthur Avenue and then to a baseball game at Yankee Stadium. He recalled that they were having a great time at the street fair but that at one point he asked Respondent for "one thing too many" which prompted Respondent to yell at him and to hit him in the middle of the street. Later, while they were still at the street fair, as they were walking down a side street, Respondent punched him two or three times in the lower back and kidney area. Person B recalled that after she did this, they went to the Yankee game and had a great time.

Person B confirmed that in February, 2007, he told his mother that he was thinking about committing suicide. He could not recall if he was seeing Dr. Faireey at that time and he also could not recall if he was taking any medication. He testified that he no longer has any relationship with Respondent or his grandparents.

On cross-examination, Person B acknowledged that although Respondent verbally threatened to use her firearm against him, he never actually saw Respondent's firearm. Person B could not recall any conversation he had with his mother during the MLK holiday weekend, but he remembered being placed in handcuffs by Respondent who had retrieved the handcuffs from her bedroom closet.

Person B was confronted with answers he provided to questions posed to him when he was interviewed by Department investigators. At this interview, Person B stated that Respondent had handcuffed him a total of six times. Person B also stated that on one occasion while Respondent was driving him home in her car, he asked Respondent for her handcuffs and when she gave them to him he handcuffed himself. In his Department interview, Person B answered affirmatively when he was asked if Respondent had ever

displayed her firearm to him. Person B testified that he may have misinterpreted the word “displayed” because he was only 11 years old at the time of the interview. He confirmed that Respondent never actually displayed her firearm to him.

Regarding the coming home from church incident, Person B testified he recalls that Respondent handcuffed him to the inside of the car door. He could not recall whether he had his cell phone with him or if he tried to unlock the door from the inside of the car.

Person B asserted he may have been abused by Respondent since the age of three. He remembers being “smacked” by Respondent when he was three years old. Person B denied that he had received any letters from Person C. He agreed that he was “beaten” by Respondent at least once or twice every two or three months but that he was not struck on his face. Person B testified that the first people to know about his abuse were his parents. However, in his Department interview, Person B stated that the first person he notified was his grandmother Rose. He testified Rose knew he was being abused by Respondent and that Rose approached him and told him that she would “take care of” Respondent.

Person B recalled that he was not handcuffed to a doorknob at Respondent’s residence, rather he was handcuffed to a bar in the closet. Person B could not remember if he was actually handcuffed in Respondent’s room. Person B asserted that Respondent verbally threatened to hit him with a “combination lock in a sock,” but he could not recall when or where Respondent had threatened him. He agreed that Respondent never displayed a combination lock inside a sock.

Person B confirmed that he did not tell anyone that he was beaten by Respondent at the Arthur Avenue street fair. He maintained that Respondent had beaten him because he had asked for “too many things at once.” Person B testified that his mother Kerry had never

struck him with a closed fist. Person B denied that he had told his therapist that he was raped by Respondent and he denied that he had fabricated any of the abuse incidents regarding the Respondent.

Person C

Person C, [REDACTED], is Person B's [REDACTED] and Respondent's [REDACTED]. She testified that she and Respondent spent a lot of time together, did many things together and had a good relationship. Person C also had a similar relationship with her [REDACTED] Person E and [REDACTED]. Person C said Respondent never hit her or her [REDACTED] [REDACTED] Person D, but that Respondent's relationship with Person B became "strange."

Person C recalled that once when they were all on their way back home from church, Respondent was upset with them because they were all misbehaving in the car. Respondent was particularly upset with Person B and told hold him that if he said anything to his parents that Respondent would "crucify" him. After they arrived at home, Person C saw Person B handcuffed inside Respondent's car.

Person C also recalled that during the MLK holiday weekend in 2007, while she and Person B were sleeping over at Respondent's house, Person B and his friend began arguing over a game. Respondent yelled at them and then took Person B to the basement. Once Person B and Respondent were both in the basement, Person C heard a loud sound and then heard Person B moan. Rose told Person C that Respondent was taking Person B downstairs to look for his game. Person C later received a voicemail in which Person B said, "You need to help me."

On cross examination, Person C stated that at the time of this incident she was 11 years old. She said Respondent never struck or handcuffed her, and she never saw

Respondent ever strike Person B. Person C admitted that in 2006 she wrote a letter to Person B [Respondent's Exhibit (RX) B] in which she stated that she wanted to forget about past problems; that she was not perfect, but that she did not know what she did to him "years ago to start this insanity;" and that she was "tired of how you always change the story and make it sound like I'm the bad kid." Person C stated that Person B gets into "rages" and yells at her and their parents.

She said at the time she observed Person B handcuffed inside the car, she may have been a little older than eight or nine years old but she was not certain. She could not recall whether Person B was handcuffed to the front passenger door or to the rear passenger door but she did recall that Person B was crying as she was exiting the car and walking towards the house. When she noticed that Person B had not come to the house, she went back to the car to check on him and observed a handcuff on his right wrist. Other than this instance, Person C never observed any type of abuse by Respondent against Person B. Person C did not immediately tell her parents about the handcuffing in the car incident.

With respect to the Martin Luther King weekend in 2007, Person C said she did not save any messages that Person B left on her phone, nor did she play those messages to any of her family members. She acknowledged that Person B told her that he had been handcuffed in the basement by Respondent some time after December 9, 2008. With respect to the Yankee Stadium trip, after Person B returned from the game, Person B did not tell her that Respondent had abused him in any way that day.

Doctor George Faireey

Faireey, a licensed and board certified psychiatrist, has been practicing for 35 years and specializes in clients who suffer from bipolar and post-traumatic stress disorder. He began seeing Person B on October 4, 2006, when Person B was 13 years old and he treated him for five years. Faireey testified Person B was initially treated for depression; he was hiding a lot of “stuff” and did not want to talk about it. Over the course of two months, Person B began showing signs of extreme anger and irritability and told his mother that he wanted to commit suicide. Faireey said that Person B also told others that he had been physically abused by Respondent since he was seven years old. Person B was subsequently diagnosed with “post-traumatic stress disorder with resulting bipolar symptomatology.” Faireey based his diagnosis on his conversation with Person B’s school psychologist, Person B’s behavior, and what Person B told him during their sessions.

Faireey recalled that Person B started talking about his abuse between February, 2007 and March, 2007. Faireey testified that it is common for abuse victims to hold back information for many reasons, but in this instance, Person B held back information because he was afraid. Person B told Faireey about two separate incidents of being handcuffed by Respondent, once inside a car and once in a basement, but Person B could not recall the exact dates. Faireey said it is common for abuse victims to have unclear recollections of the abusive events.

Faireey testified that Person B told him that he was extremely angry and that he would try to start fights with both his friends at school and his father. Faireey explained that it is not unusual for abuse victims to act out by engaging in violence.

Faireey acknowledged that Person B's mother, Kerry, used corporal punishment to control his violent outbursts. At one point, Person B told Faireey that his mother was abusing him. Other family members also accused Kerry of abusing Person B. However, three months into Person B's treatment, Person B told Faireey that Kerry did not abuse him; that Kerry did not repeatedly strike him; that Kerry did not hurt him and that he was not afraid of Kerry.

Faireey said that although Person B would sometimes exaggerate his stories, Faireey still believed that he was being abused by Respondent. Faireey testified that at one point Person B told him that Respondent had tried to rape him but that Person B later retracted this claim.

Person B told Faireey about the two handcuffing incidents more than once and Person B's recollections of the incidents were consistent. Faireey acknowledged that the only time Person B lied was when Person B told him that Respondent had tried to rape him.

On cross-examination, Faireey agreed that other than Person C's account of the handcuffing incident inside Respondent's car, he had no objective, independent evidence, such as injuries or medical records that would link Person B's abuse to Respondent. Faireey said he accepted Person B's account of the car handcuffing incident as true and did not conduct a follow-up investigation.

On October 22, 2008, Faireey prepared a report about Person B's treatment in which Faireey stated there were some inconsistencies in Person B's accounts of the different incidents. Faireey agreed that it was not an "absolute fact" that Respondent had physically abused Person B.

Faireey stated that he now believes that Person B was truthful but he agreed that he had not acquired any new evidence that would explain why he changed his mind since he prepared his October, 2008 report. Person B told Faireey that he made up the rape story

because he was mad at Respondent and because he wanted to get Respondent in trouble because people did not believe that she had physically abused him.

In his notes of March, 2007, Faireey wrote that Person B was becoming angrier and more hostile than usual, that Person B had begun changing his account of incidents, and that Person B had accused his mother of abusing him.

Faireey acknowledged that as late as August, 2010, Person B was still angry with his mother. In order to resolve this intra-family conflict, Faireey asked Person B, Kerry and Person A if they wanted a group therapy session with Respondent, but Person B was vehemently opposed to Faireey's idea. Faireey acknowledged that during 2008, Person B had been to the hospital emergency room five times; four times because of his violent outbursts and once because he was suicidal.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

With regard to the handcuffing incident at Respondent's residence, Person B told Faireey that Person C did not observe him handcuffed to the closet door in Respondent's room. Although Person B told Faireey about the handcuffing incident, Person B did not mention that he had called Person C on her cell phone, nor did he mention anything about leaving Person C a voicemail.

On redirect examination, Faireey opined that it is common for abuse victims to avoid physical confrontations with their abusers.

On re-cross-examination, Faireey agreed that another reason that an accuser may want to avoid confronting the accused is where the accuser has fabricated the abuse story.

The Respondent's Case

The Respondent called Christopher Garofalo and Rose Garofalo as witnesses and the Respondent testified in her own behalf.

Christopher Garofalo

Christopher, who is the brother of Respondent and Person A, testified that in the early afternoon on June 18, 2006, he and his wife were at his parent's home [REDACTED], where Respondent was living at the time, to celebrate Father's Day. Person A, Kerry, and their three children came over. The family, including Christopher, Person B (who was 12 years old at the time), and Person C played soccer in the backyard.

When Person B's team lost, he went over to his sister and "got in her face and claimed that, you know, they were cheating." Then he "escalated further" so Christopher had to put him on the sidelines. Person B then went inside the house, and two minutes later, Christopher followed him inside. As he was walking in, he "heard [Kerry] screaming at Person B and [he] heard what sounds like a punch, hitting a person." Then, he heard Kerry "yelling at Person B, saying I know you did it, I saw you." After walking towards the yelling, he then visually witnessed Kerry punch Person B in the ribs with a closed fist. Person B was "on the floor in the fetal position with his arm up defending himself, and defending, you know, blocking his side. And he was crying, but he was also pleading." Kerry was

screaming that she saw everything, she saw Person B hit Person C. Christopher did not think that Person B had hit Person C.

Christopher then witnessed Kerry hitting Person B a second and then a third time, all with a closed fist. When she went to hit Person B for the fourth time, Christopher grabbed her wrist, and said not to hit him again. Then Kerry asked Christopher, “[W]ho the fuck do you think you are?” Kerry and Christopher began arguing over what had happened outside. Kerry claimed to have witnessed Person B hit Person C, but Christopher said that never happened. Christopher’s brother heard the argument and came over and intervened.

Shortly thereafter, Kerry attempted to gather up her belongings and children to leave, but Christopher asked her not to, so things would not be blown out of proportion. With that, Kerry “started to come to [Christopher] to swing at [him], to hit [him].” Ultimately, Respondent and Christopher “brought [Kerry] out of the house like two or three times because [Kerry] kept coming back in to attack [Christopher] physically.”

A separate incident occurred at Person B’s Confirmation in 2005. “Person B was upset about something and he was resisting his parents...it was quickly escalating ...at one point, Person B became oppositional to his father [and] Person A punched him in the chest and arm area” with a closed fist. This was the only time Christopher had seen Person A strike Person B.

However, there was another instance where Christopher witnessed Kerry strike Person B. On this occasion, he witnessed Kerry strike Person B with an open hand at a community pool.

At the time of observing the incidents described above, Christopher had a "cordial" relationship with Kerry. As of the time of his testimony, Christopher had not seen Kerry in "four or five years."

He has never observed Respondent use physical force against Person B. He has "absolutely not" observed Respondent handcuffing Person B to any car door or closet door.

Upon cross-examination, Christopher stated that he visited his parent's house [REDACTED] [REDACTED] about twice a week during the period when Person A, Kerry, their children, and Respondent all lived there. He testified that Respondent lived upstairs and Person A, Kerry and the three children lived downstairs.

Christopher agreed that if he were standing in the upstairs area of that home, he would be able to hear what somebody in the downstairs area was doing, even if the door was closed.

He further stated that he had a good relationship with Respondent, and he would not classify her as a moody person.

He stated that at the time of his testimony, he did not share any relationship with Person B, Person C, or their other sibling, Person D.

Upon redirect examination, Christopher stated that if someone was in the basement and the door was closed, and someone was screaming, "there is no doubt in [his] mind that you would hear it because there is a window also, and right above that is the dining room and living room area."

He testified that after the "Father's Day incident" he had a meal with his brother Person A at Applebee's. During the meal, they discussed what had happened on Father's Day, and Person A "threw a couple of barks at [Christopher's] wife." Christopher then said

to Person A, "you are in no place to judge my wife when you haven't even looked at yourself or your own wife and acknowledged your own problems." The two brothers eventually shook hands, and then parted ways.

Christopher stated that prior to the allegations against his sister, he had an "awesome" and "nice" relationship with his niece Person C and his nephews Person B and Person D. He "always played with them and went to their sporting events." However, he stated that at the time of his testimony he had a "hostile relationship" in which he was not even informed that Person C had been diagnosed with cancer. The last contact he had with them was in 2007 when he left a voicemail on Person A's answering machine, which went unreturned.

Upon recross examination, Christopher denied that it had ever crossed his mind that Person B had been telling the truth and that Respondent had abused him. He also admitted that he never asked Person B for his side of the story because he had not been in touch with him since the allegations

Rose Garofalo

Rose is the mother of Respondent, Person A, and Christopher. In 1992, six months before they married, Person A and Kerry moved into Rose's home [REDACTED]. They ended up living there for "a little bit more than 10 years." They lived in the downstairs basement which was renovated into an apartment. During those ten years, Person A and Kerry had three children.

Also during those ten years, Respondent moved back into the same home after breaking up with her husband. She lived upstairs in "her old room." Rose recalled that

meals usually only included Respondent, Rose, and Rose's husband. Occasionally, Person A and his family would join them.

Person A "never gave [Rose] any trouble, anything like that...he was very, very family oriented." However, when he married Kerry, Rose's relationship with her son "changed." Her relationship with her grandchildren was good. There were no behavior problems with Person B during the time that he lived in her house.

Rose testified that Respondent would sometimes babysit the three children when they were all living together. Rose never observed Respondent strike Person B or any of the other children, nor did she witness Respondent verbally abuse Person B or any of the other children. However, she did observe Respondent speak sternly to the children in appropriate situations.

On one occasion, she went to take a tour of Yankee Stadium with Respondent, Person B and some other members of the family. She stated that after coming back from Arthur Avenue, Person B's demeanor was "really happy," and he was not crying. He did not complain about being punched by Respondent and there was nothing in his demeanor that would suggest that something of a negative nature had just happened to him. Rose stated that Respondent could not have hit Person B because "the place was loaded with people, but never mind people, there were so many police officers around that it would almost be impossible."

Regarding the dispute over the MP3 player, Rose stated that she was in the kitchen, not the living room where this occurred. But she heard the "rhetoric going on, yes, it's mine; no, it's not." Rose did not see Person B handcuffed to the closet door when she went downstairs to the basement. Rose stated that she never heard Person B screaming

from Respondent's bedroom in the basement. She never saw Respondent handcuff Person B to either a car door or a closet door. She testified that she has never seen Respondent's handcuffs.

Rose stated that sometimes when Person B was off from school the next day, he would ask to stay over. She testified that when she asked Person B if he liked staying at "nan's house," he said yes. However, Kerry "adamantly said in one of her outbursts that [none of the children ever] wanted to stay at the house."

Rose further testified that on December 8, 2007, Person B called her up and said something to the effect of, "Nan, I am tired of your bullshit." This was the first time Person B had ever cursed to her. However, Kerry had been "disrespectful and unkind" to Rose both before and after that call.

When Kerry's parents both died, Kerry and Person A went to Florida to take care of the estate. Before leaving, Kerry and Person A told Rose not to leave Person B alone with Respondent, but when pressed for the reason they stated only that Person B was having issues. There were no incidents between Respondent and Person B while Kerry and Person A were in Florida.

Rose stated that Respondent is not a moody person and that she never told Person A that. Respondent's skills in being a guardian were good "she was very protective of them, loving, sometimes like maybe she would love them too much and she would buy them things. Person B or Person C would say 'is Aunt Annie coming over? When Person B saw that [Respondent] wasn't there yet, he would say, 'Nan, where is Aunt Annie? Can I call her?'"

Rose stated that she would never lie for Respondent. She asserted that she never saw anything that indicated there was any truth to Person B's allegations against Respondent.

On cross examination, Rose testified that when her son Person A informed her that there were allegations against Respondent for abusing his son Person B, her immediate reaction was "shock." She stated that she never considered the possibility that Person B was telling the truth regarding these allegations because she trusted her daughter and she knew that her daughter would never abuse children.

Rose testified that when Kerry asked her not to leave Respondent alone with Person B, Kerry did not explain the reason for this. She trusted her daughter, so she thought it was acceptable to allow Person B, Respondent, and Person B's brother Person D to go out together.

Rose testified that there was never a time when she sat down with Person B and said that she knew "what was going on" between he and Respondent. She stated that if Person B said that this happened, he was not telling the truth.

Rose testified that after she received the phone call from Person B in which he cursed at her, she called "a fair, family-oriented" mediator to solve what she considered to be a problem. She stated that "the prime reason to bring in the mediator was to help Person B." She hired and paid the mediator. Rose, Kerry, Person A and Person B went to mediation together until the session when Person B did not show up. After this session, Kerry and Person A stopped going to mediation as well.

As of the time of her testimony at this trial, Rose had not seen her grandchildren in over four years.

Rose admitted that she was not with Respondent and Person B during the entire trip to the Bronx. She only saw them "intermittently." She also admitted that after she left them, she did not see them again that day.

Rose testified that she spoke with Person B downstairs after the MLK holiday weekend incident. Respondent started to come downstairs with her, but she told Respondent to go back upstairs because she had the situation under control. Rose stated that Respondent "[a]bsolutely, didn't go. She did not go" downstairs again while Person B was there.

Rose stated that during the time Kerry and Person A lived with her, "it was a job" to get along with Kerry. She also testified that Respondent once told her that she had told Person B she was going to "crucify" him for bickering with his siblings.

On redirect examination, Rose stated that after Respondent found out about Person B's allegations against her, she told Person A, "What are you, crazy? Can't be. I've never touched him." Person A responded that he had to find out whether the allegations were true or not.

Rose testified that Kerry and Respondent had an "up and down" relationship even before Person B's allegations against Respondent were made known.

On recross examination, Rose stated that she firmly believed that it was impossible that Person B's allegations against her and against Respondent could possibly be true, saying, "[T]here was never any time that we would see them and he [Person B] wasn't in a good mood around us."

Respondent

Respondent, a ten year member of the Department, was assigned to the 17 Precinct at the time of these events. She testified that when Person B's allegations against her were reported to the [REDACTED] CPS, she notified her immediate supervisor, the Integrity Control Officer at her command, and the Internal Affairs Bureau (IAB). Pursuant to Interim Order No. 9,¹ her duty status changed for three days. Respondent then met with a Department psychiatrist. Three days later she was returned to full duty. She has been assigned to full duty ever since.

She said her relationship with Kerry was always "very strained" and that Kerry was very "combative" and difficult to get along with. Respondent believed that Kerry was jealous of Respondent's relationship with her family.

Respondent testified that as a birthday gift to Person B, she arranged a trip to Arthur Avenue and Yankee Stadium on a chartered bus. Upon their arrival at Arthur Avenue, Respondent learned that a street fair was about to take place. The area was crowded with police officers, firefighters and many different street vendors. Respondent and Person B visited a few vendors and then met with Rose, Person A, and other close family friends for lunch. Respondent denied hitting, smacking or abusing Person B at the Arthur Avenue street fair. After the street fair, Respondent and Person B went for a tour of Yankee Stadium. Person B told her that he had a "great day" and that he wished that she was his mother. On the way back from the stadium, Person B's mood had changed. When Respondent asked him what was wrong, Person B replied that he was upset because his maternal grandfather had passed

¹ Interim Order No. 9, which has been incorporated into Patrol Guide Procedure No. 205-47, permits a supervisor of the rank of Captain or above to remove a member's firearm for a non-disciplinary purpose.

away. When they arrived at Person B's residence, Kerry stated that Person B may have been upset because his father does not spend a lot of time with him.

Respondent stated that she rarely brings her firearm home and that if she did she would secure it in a locked box. Respondent acknowledged that on a few occasions she has brought her handcuffs home but Respondent denied that she had ever handcuffed Person B.

She recalled that during the MLK holiday weekend in January, 2007, Person B was very upset because he could not go to Florida with his parents. Person B became angry and threw a temper tantrum and also refused to go to pitching practice. Respondent called Kerry so that she can calm him down, and after Kerry promised Person B a paintball gun, Person B agreed to go to pitching practice. Moreover, during the same weekend, Respondent's neighbor's son, Person F, came over to Respondent's house to play with Person B, upset that he lost his game, took Person F's game and threw it on the floor. Subsequently, Respondent and Rose took Person B to Respondent's room to speak with him about his tantrum. Respondent denied that she had handcuffed Person B to a closet. She added that if someone was screaming in the basement, it could be heard on the second floor. Respondent also denied handcuffing Person B to the inside of her vehicle and asserted there is no fixture on the inside of her vehicle's door to attach a handcuff to.

On cross-examination, Respondent testified that she did sometimes verbally discipline Person B when she became exasperated with his behavior. Once, when he was fighting with his younger siblings, she told him, "Stop fighting," and that if he did not stop then "you'll go to your room." She also sometimes remarked, "I sense a crucifixion coming on" and also told him, "You won't get dessert tonight."

FINDINGS AND ANALYSIS

It is charged that on days when she was off-duty between August 30, 1998, and February 28, 2007, Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that she knowingly act in a manner likely to be injurious to the physical, mental or moral welfare of her nephew Person B, who was a child under 17 years old, in that she on more than one occasion struck and/or handcuffed and/or threatened Person B.

Person B testified that Respondent had struck him and/or handcuffed him and/or threatened him on a number of occasions. Dr. Faireey, who was called as a witness by the Department, testified that although Person B told him that Respondent had once tried to rape him, Person B recanted this allegation; that although Person B told him that Kerry had abused him, Person B later claimed that his mother had never abused him; and that Person B had offered inconsistent versions regarding some of the allegations he made against Respondent. In addition, although Kerry testified that on one occasion she had punched her son with a closed fist, Person B asserted that his mother had never hit him with a closed fist. Also, although Person B testified on direct examination at this trial that Respondent had slapped him on his face, on cross-examination, and during an IAB interview, Person B stated that Respondent had never slapped him on his face.

As a result of Person B's false attempted rape allegation, his recantation, and the inconsistent statements he has made regarding many of his allegations against Respondent, I find that no allegation that Person B has made against Respondent can be credited unless Person B has offered a consistent version of the event and unless Person B's

version of the event is directly corroborated by credible testimony or other believable evidence.

Based on this determination, I find that Person B's testimony does not constitute evidence sufficient to support a finding of guilt against Respondent with regard to the following allegations that Person B has made against Respondent: His allegation that when Respondent took him to Arthur Avenue and Yankee Stadium that Respondent had punched him as many as three times, and his allegation that on the MLK holiday weekend Respondent had locked him inside a closet in Respondent's basement apartment and handcuffed him to the door of the closet.

With regard to the first allegation, there is no physical or other corroboration for Person B's claim that because he had asked Respondent for "one thing too many" at a street fair, Respondent had punched him as many as three times on his lower back above his kidney area, and Person B has offered inconsistent versions of where they were when Respondent allegedly struck him, asserting at this trial that he was punched while they were in the middle of a street when he previously had asserted that they were in an alleyway.

With regard to the second allegation, there is also no physical corroboration or eyewitness support for his claim that, because he created a fuss about a video game, Respondent locked him inside a closet and handcuffed him to the door inside her basement apartment. Although his sister Person C testified that Person B had left messages on her cell phone that he needed her help, these calls constitute insufficient corroboration to support a finding that Respondent handcuffed Person B to a door.

However, I do credit Person B's allegation that on a Sunday after Respondent had driven him, Person C and Rose home from church, Respondent handcuffed Person B to the inside of the door of her car. Respondent acknowledged in her testimony at this trial that on a few occasions she had brought her handcuffs home and Dr. Faireey testified that he questioned Person B about this incident several times and that Person B always provided a consistent version of this event. Most significantly, Person C testified that she personally observed Person B inside Respondent's car and saw with her own eyes that he was in handcuffs.

I credit Person C's eyewitness testimony regarding this incident because, unlike Person B, Person C never had any problems with Respondent; because her tearful testimonial demeanor demonstrated how difficult it was for her to testify against her aunt; and because she did not claim that she could corroborate any of Person B's other allegations against Respondent. It is not disputed that Respondent and Person C got along well and that Respondent called her "an Angel." During her testimony at this trial, when she recalled how Respondent had become angry as she was driving them home from church, Person C even attempted to deflect some of the blame for Respondent's anger on herself when she testified that she, as well as Person B, had been "acting up" on the trip home.

Moreover, Person C's testimony regarding this incident had the ring of truth in that she did not claim that she had seen Respondent place the handcuffs on Person B. Rather, she testified that when she reached the front door of the house and realized that Person B was not walking behind her, she returned to Respondent's car to find the door locked and her brother still inside the car crying with a handcuff closed on his wrist. The mere fact that Person C was not certain whether he was seated in the front or rear passenger seat does not

serve to impeach her testimony because it is clear that her focus was on the handcuff she saw on Person B's wrist. Also, nothing Person C wrote in her letter to Person B (RX B) serves to impeach her testimony regarding this incident.

Person C's testimonial credibility is enhanced by the fact that she did not claim she had seen Person B in handcuffs on any other occasion. If Person C was inventing her claim that she saw Person B in handcuffs inside Respondent's car in order to support her brother's version of this event, it is likely that she would have also claimed that she had seen Person B handcuffed him to the door in Respondent's basement apartment on the MLK holiday weekend. Yet she candidly admitted that she had not witnessed this handcuffing incident and she further candidly testified that in the messages that Person B sent her he did not state that Respondent had handcuffed him, he only stated that he needed help. Finally, the credibility of Person C's testimony regarding this event is supported by Dr. Faireey's testimony that when he interviewed Person C, Person B was not present. Dr. Faireey's testimony regarding what Person C told him during this interview about this incident is consistent with Person C's trial testimony. I reject Rose's testimony regarding this incident because it is clear that when it came to disciplining Person B, she completely deferred to Respondent and that she had no desire to report any action taken by Respondent against Person B that could get Respondent in trouble.

With regard to that part of the Specification that alleges that Respondent threatened Person B, there is no corroboration in the record for Person B's claim that Respondent threatened him that if he reported her actions she would shoot his parents, and Person B acknowledged that Respondent never displayed her firearm to him. Although Respondent acknowledged that she sometimes lost patience with Person B's behavior and that

in exasperation she had sometimes made remarks such as "I sense a crucifixion coming on" and "You won't get dessert tonight," such exasperated comments do not rise to the level of genuine threats.

Based on the above, I find Respondent Guilty of placing a handcuff on Person B's wrist inside a car on one occasion.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on March 1, 2000. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department on a single occasion when she placed a handcuff on Person B and left him inside her car. Although the Specification cites to and mirrors the wording of the class A misdemeanor of Endangering the welfare of a child, the agency which investigated Person B's allegations against Respondent, [REDACTED]

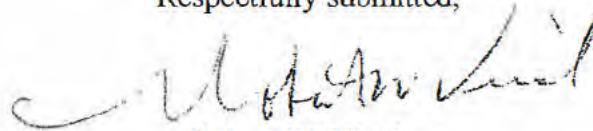
[REDACTED] Child Protective Services, unsubstantiated his claims and, thus, Respondent was never arrested, much less prosecuted, for Endangering the welfare of a child regarding any of Person B's allegations against her.

The Assistant Department Advocate recommended that Respondent forfeit 30 vacation days. In formulating a penalty recommendation, I have taken into consideration Respondent's outstanding performance evaluations, her lack of a prior formal

disciplinary record, and the fact that the Department sufficiently proved only one of the many allegations that Person B made against Respondent. Thus, a substantially lesser penalty appears to be warranted.

Therefore, I recommend that Respondent forfeit ten vacation days.

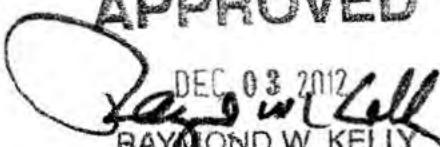
Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner – Trials

APPROVED



DEC 03 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

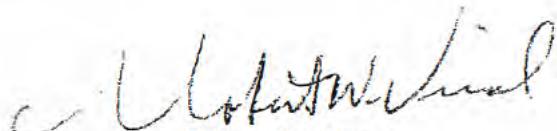
From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANGELA GAROFALO
TAX REGISTRY NO. 925335
DISCIPLINARY CASE NO. 86146/10 (DADS NO. 2010 571)

The Respondent received an overall rating of 4.5 on her 2010 performance evaluation, 4.5 on her 2009 evaluation, and 4.5 on her 2008 evaluation. She has no medals. [REDACTED] She has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner -- Trials